IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 20596 of 2004

Between:

B.S.J.V. Prasad, E-99066, Conductor,
Allagadda Depot, S/o. Prakasa Rao, 44 years, R/o. Gadivemula,

Kurnool District.

..... PETITIONER

AND

1. The APSRTC, rep by its Managing Director, Musheerabad, Hyderabad.
2. The APSRTC, rep by its Regional Manager, Kurnol Region, Kurnool.
3. The Depot Manager, APSRTC Allagadda, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not computing the periodical increments in pursuance of the Award in ID No. 314/2000 Dt. 10-12-2002 as illegal and arbitrary and as such liable to be set aside with a consequential direction to the respondents herein to compute the periodical increments that would have been earned by the petitioner had he been in service during the out of employment period i.e., 27-12-1997 to till reinstatement and after determining such increments and on the basis of the same to fix the wage payable to the petitioner after his reinstatement and to pay the arrears in respect of the period subsequent to reinstatement and pass

Counsel for the Petitioner: MR.S.M.SUBHAN

Counsel for the Respondents: MR.P.VINAYAKA SWAMY

The Court at the admission stage, made the following :

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO. 20596 of 2004

ORDER:

Petitioner was appointed as a conductor in the respondents-Corporation in the year 1981. On the allegation of cash and ticket irregularities, he was terminated from service through the proceedings dated 27-12-1997. Aggrieved by the said order, the petitioner filed Industrial Dispute before the Labour Court, Anantapur. The Labour Court through its award dated 10-12-2002 directed the respondents-Corporation to reinstate the petitioner with continuity of service, but without back wages. Consequent to the publication of the award, the petitioner was reinstated into service in April 2003. But, his pay was not fixed by adding the notional increments for the period from the date of termination till the date of reinstatement i.e., from 27-12-1997 to 12-04-2003. The grievance of the petitioner is that the respondents did not fix his pay by adding the notional increments despite his representation dated 13-06-2004. He therefore approached this Court through this writ petition to direct the respondents to fix the pay of the petitioner by computing the notional increments that would have been earned by the petitioner had he been in service during the out of employment period i.e., 27-12-1997 to till reinstatement and after determining such increments and on the basis of the same to fix the wage payable to the petitioner after his reinstatement and to pay the arrears in respect of the period subsequent to reinstatement.

2. The award of the lower Court indicates that on reinstatement the

petitioner is entitled for continuity of service, without back wages. A Division Bench of this Court in **Regional Manager, APSRTC, Nizamabad v. B. Chander Rao** held that the employee is entitled for notional increments, in pursuance of the order of the labour court extending the benefit of continuity of service. The Division Bench while rendering the above decision distinguished a decision of the Supreme Court in **APSRTC & another v. S. Narasa Goud** wherein the Supreme Court held that the employee is not entitled for increments for the period of his unauthorized absence unless the same is regularized. The Division Bench relied on another judgment of the Supreme Court in **Devendra Pratap Narain Rai Sharma v. State of U.P.** and gave the above direction.

3. In the light of the judgment of the Division Bench in **B.Chander Rao** (1 supra) and in the light of the order of the labour court extending the benefit of the continuity of service, the petitioner is entitled to get the notional increments fixed for the purpose of fixation of his pay for the period from the date of termination till the date of reinstatement.

4. In the result, the writ petition is allowed. The respondents are directed to fix the pay of the petitioner by working out the notional increments of the petitioner for the period from the date of termination till the date of reinstatement within eight weeks from the date of receipt of this order.

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November 9, 2004

KVR

To

1. The Managing Director, APSRTC, Musheerabad, Hyderabad.
2. The APSRTC, rep by its Regional Manager, Kurnol Region, Kurnool.
3. The Depot Manager, APSRTC Allagadda, Kurnool District.

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